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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/705,310
Filing Date: November 10, 2003
Appellant(s): OTTOFY, GLYN

Karen J. Sepura
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 18, 2008 appealing from the Office action mailed April 30, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,142,872	WALKER	11-2000
5,755,621	MARKS	5-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4-7, 10-12 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker et al. ("Walker") (U.S. 6,142,872).

3. Regarding Claims 1 and 11-12, Walker discloses a team gaming tournament method and apparatus including providing a computer network including a server including a memory for storing program instructions and data, a processor coupled to said memory for executing said program instructions, wherein said program instructions include program instructions and at least one end-user computer coupled to said server ,via a network connection (col. 6, lins. 61 - 64), wherein said end-user computer has a graphical display portion adapted to display a browser window, displaying a game of a gaming tournament in said browser window (fig. 4, elem. 410; fig. 5, elem. 510; where a game window shows a browser with game information), permitting a plurality of users to enter said game of said gaming tournament, forming a plurality of teams of at least one user from said plurality of users entered in said gaming tournament (col. 4, lins. 28 - 31), sending user input from said plurality of users to said server (col. 4, lins. 38 -40; where a slot server can detect and process player input), calculating a placement finish for each of said plurality of teams in said gaming tournament in conformity with a predetermined formula having dependence on both a number of users on each of said plurality of teams and a performance of each said plurality of users (col. 6, lins. 12 - 34; where a placement finish is calculated by taking

the greatest win score of a team of players of least loss score of a team of players and applying that score as the team result).

Regarding Claims 4 and 15, Walker discloses a method and program instructions including receiving an entrance fee from at least on of said plurality of players and said plurality of teams in order for each said plurality of teams to enter said gaming tournament and paying at least one of said plurality of teams and at least one of said plurality of players an award in conformity with at least one of a performance of each said plurality of teams and a performance of each said plurality of players, said award in conformity with a percentage of a total amount of said entrance fees received (col. 6, lins. 12 - 34; where an award of 100 coins is given, for example, when each player has entered 100 coins to buy into a game).

Regarding Claims 5 and 16, Walker discloses a method and program instructions including paying a predetermined amount of said percentage as an award to teams having at least two players and paying a predetermined amount of said percentage as an award to teams having one player (col. 5, lins. 3 - 13; where payouts are different whether conventional single player or team gaming is played).

Regarding Claims 6-7 and 17-18, Walker discloses a method wherein said gaming tournament is a poker tournament, and includes at least one poker game of at least one of Texas Holdem, Seven Card Stud Hi, Seven Card Stud Hi/Low, Five Card Stud, Omaha Hi, and Omaha Hi/Low (col. 4, lins. 24 - 26; where a generic video poker game may inherently include many different popular types of poker games).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 8-9 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker.

Regarding Claims 8-9 and 19-20, Walker discloses a method and program instructions including a team play poker system, but does not disclose limiting a number of said plurality of players to enter said gaming tournament to a predetermined number, requiring each said plurality of teams to comprise a predetermined minimum number of players, and limiting each said plurality of teams to a predetermined maximum number of players, in order to restrict access to a maximum number of players. Walker does disclose player caps for the maximum number of players for increased security, as well as maintaining a manageable number of players per team. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the team game play poker device of Walker with player scoring with player entry controls in order to create a more secure gaming environment for a casino.

Claims 2-3 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Marks et al. (U.S. Patent 5,755,621).

Regarding Claims 2-3 and 13-14, Walker discloses a method of and program instructions for placement finish including assigning a finish number to each said plurality of players (col. 6, lins. 12 - 20; where a finish number is a player game score). However, Walker does not disclose finishing numbers reflecting a win/loss order, or equalization numbers. However, Marks teaches

said finish number being equivalent to an order that each said plurality of players is eliminated from said tournament relative to other said plurality of players, assigning a finish equalization number to each said plurality of teams, said finish equalization number being equivalent to a maximum number of players allowed per each said plurality of teams divided by an actual number o of players per each said plurality of teams (col. 20, lins. 15 - 22; where each player is ranked based on the outcome of the current round of the tournament), assigning an equalization number to each said plurality of players, said equalization number being equivalent to a multiplication of said finish number of each said plurality of players of a team and said finish equalization number of said team, calculating a team placement finish, wherein each said plurality of teams having a placement finish equivalent to a sum of said equalization number for each of said plurality of players of each said plurality of teams wherein a higher number corresponds to a higher team placement finish, and assigning said finish number only to each said plurality of players finishing in a predetermined number of places in said gaming tournament (col. 20, lins. 15 - 22; where player rankings for players that have not been eliminated in each round of the tournament are constantly updated with the player's relative ranking in a smaller group of competitors, for example, player may be ranked out of 30 for an early round, but only out of 10 for a later round) in order to increase excitement and competition among players, as well as extend the multiplayer and group play beyond teams into a competitive setting. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the team game play poker device of Walker with player scoring with the poker tournament game system with player ranking of Marks in order to increase excitement

and competition among players, as well as extend the multiplayer and group play beyond teams into a competitive setting.

(10) Response to Argument

6. Regarding the rejection to claims 1, 4-7, 10-12 and 15-18 under 35 U.S.C. 102(b) as being anticipated by Walker, Appellant, right from the start of the arguments (Page 10 of the AB filed April 30, 2007), misconstrues Walker to state, "[Walker] is specifically directed to the team play of slot machines, in which players play against machines." This allegation is incorrect. In fact, in the same paragraph, Appellant provides references in Walker to players playing on a teams where teams compete against other teams.

7. Appellant then argues that the limitation, "of the gaming tournament being a live poker tournament in which players compete against one another" is "notably absent" from Walker. The Examiner respectfully disagrees. Even more notable, is the fact that the term "live poker tournament" is absent from Appellant's originally filed specification, including the original claims. However, the Examiner notes that the specification does refer to live play or live gaming tournaments; therefore, the Examiner did not make a rejection under 35 U.S.C. 112, first paragraph for a lack of enablement or the written description requirement. Nevertheless, Appellant's specification states, "the main difference between live play and internet play is merely the number of overall players involved in the tournament and the player's physical location." (Page 2, lines 3-5). Additionally, the specification states, "In the preferred embodiment, the gaming tournament is managed by a live or internet casino and is a poker tournament..." (Page 7, lines 3-5). The Examiner submits Walker discloses live (current) play.

(See the "Per-Spin Embodiment" at C4:45-C5:35 and the Per-Session Embodiment at C5:38-C6:2, C6:35-39, C8:55-58, C9:27-37, and the Video Poker Embodiment at C16:39-65).

8. Appellant attempts to add to the specification, via argument, another distinction (besides the one given in the originally filed specification) between live poker and video gaming poker by alleging "in live poker-where players compete against other players, as opposed to competing against machines - players have the ability to bluff or deceive other players." Appellant adds, "This critical element is not present in Walker." The Examiner submits if it was so critical to the instant invention, then why was it not described in the originally filed specification? Moreover, in response to Appellant's argument that Walker fails to show certain features of Appellant's invention, it is noted that the features upon which Appellant relies (i.e., players have the ability to bluff or deceive other players) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

9. Appellant further attempts to prove this point with the Declaration under 37 CFR 132 of Richard Fitzhugh, filed December 18, 2006. However, The Declaration under 37 CFR 1.132 filed December 18, 2006 is insufficient to overcome the rejection of all of the claims based upon the outstanding art rejections under 35 U.S.C. 102 and 103 as set forth in the last Office action because: The Declaration amounts to an opinion; the Declaration is not commiserate with the scope of the claims; and/or is unsupported by the originally filed specification.

10. Therefore, the Examiner respectfully submits that the rejection to claims 1, 4-7, 10-12 and 15-18 under 35 U.S.C. 102(b) as being anticipated by Walker is proper.

11. Regarding the rejection to claims 8-9 and 19-20 under 35 U.S.C. 103(a) as being unpatentable over Walker, Appellant alleges there is no suggestion to modify Walker because a secure environment for a casino has nothing to do with the invention. In response to Appellant's argument that there is no suggestion to modify Walker, the fact that Appellant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

12. For these reasons, the Examiner respectfully submits that the rejection to claims 8-9 and 19-20 under 35 U.S.C. 103(a) as being unpatentable over Walker is proper.

13. Regarding the rejection to claims 2-3 and 13-14 under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Marks et al. (U.S. Patent 5,755,621), Appellant alleges said claims are allowable for the same reasons as those given for independent claims 1 and 12. The Examiner respectfully disagrees as discussed with regards to the rejection under 35 U.S.C. 102(b) as being anticipated by Walker above. Additionally, Appellant alleges Marks does not suggest "calculating finishes for individual players based on the play of their teammates." The Examiner respectfully disagrees for the reasons provided in the substantive art rejection.

14. For these reasons, the Examiner respectfully submits that the rejection to claims 2-3 and 13-14 under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Marks et al. (U.S. Patent 5,755,621 is proper.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Scott E. Jones/

Primary Examiner, Art Unit 3714

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